

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Norfolk Division

CSX TRANSPORTATION, INC.,
individually and on behalf
of Norfolk & Portsmouth Belt
Line Railroad Company,

Plaintiff,

v.

Civil No. 2:18cv530

NORFOLK SOUTHERN RAILWAY COMPANY,
NORFOLK & PORTSMOUTH BELT LINE RAILWAY
COMPANY,

Defendants.

ORDER

This matter is before the Court on a motion to dismiss all remaining claims for relief, filed by Defendant Norfolk & Portsmouth Belt Line Railway Company ("NPBL") on January 9, 2023. ECF No. 572. Defendant Norfolk Southern Railway Company ("NSR") joins in the motion. ECF No. 574. A bench trial on injunctive relief is currently scheduled to begin on January 18, 2023.

On January 3, 2023, the Court issued a lengthy Opinion and Order granting summary judgment in favor of Defendants on Plaintiff CSX Transportation, Inc.'s ("CSX") federal antitrust and state-law damages claims, but denying summary judgment on injunctive relief. ECF No. 559. On January 9, 2023, Defendants filed the instant motions seeking dismissal of the injunctive relief claims for lack of subject matter jurisdiction, Fed. R. Civ. P. 12(h)(3), or alternatively, seeking judgment on the pleadings, Fed. R. Civ.

P. 12(c) & 12(h)(2). In short, Defendants contend that this Court's summary judgment ruling on the damages claims divested the Court of jurisdiction (or eliminated all claims on which relief can be granted) because Defendants are "common carriers" rendering Court-ordered injunctive relief improper under 15 U.S.C. § 26.

Notwithstanding the timing of such motion, the Court should proceed to trial only if jurisdiction is present. See Kontrick v. Ryan, 540 U.S. 443, 455 (2004) ("A litigant generally may raise a court's lack of subject-matter jurisdiction at any time in the same civil action, even initially at the highest appellate instance."). Moreover, the absence of a valid claim on which relief can be granted presumably would obviate the need for a bench trial. Accordingly, the Court finds that further briefing is necessary. Though trial is fast approaching, Defendants' filings raise a discrete issue and are not lengthy. CSX is therefore instructed to file a responsive brief **no later than midnight on Thursday, January 12, 2023**. Any reply shall be filed **by 5 p.m. on Friday, January 13, 2023**.

The Clerk is **DIRECTED** to send a copy of this Order to all counsel of record. **IT IS SO ORDERED.**

/s/ 

Mark S. Davis
CHIEF UNITED STATES DISTRICT JUDGE

Norfolk, Virginia
January 10, 2023